

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT BONDS.

V.

ELDON VAIL, *et al.*,

Petitioner,

Respondents.

No. C09-5239 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION AND GRANTING
CERTIFICATE OF APPEALABILITY

The Court, having reviewed the petition for writ of habeas corpus, the response, the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 13), objections to the Report and Recommendation (Dkt. 14), and the remaining record, does hereby find and

ORDER:

- (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13). A de novo review of the record shows that petitioner's claims are unexhausted and procedurally barred. The court agrees with the thorough and careful analysis set forth in the Report and Recommendation.
- (2) The petition for writ of habeas corpus (Dkt.1) is **DISMISSED WITH PREJUDICE**.
- (3) In the event that petitioner appeals the dismissal of the petition, the court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a

Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). In this case, the petition is being dismissed as unexhausted and procedurally barred. However, a review of the record shows that the issue of exhaustion of petitioner's two habeas claims is adequate to deserve encouragement to proceed further. Accordingly, a Certificate of Appealability is **GRANTED** on the following issue: Did petitioner exhaust his claim of ineffective assistance on appeal for appellate counsel's failure to raise a confrontation claim and a public trial claim?

(4) The Clerk is directed to send copies of this Order to Petitioner, counsel for Respondent and to the Hon. Karen L. Strombom.

DATED this 4th day of November, 2009.

Robert J. Bryan
ROBERT J. BRYAN

ROBERT J. BRYAN
United States District Judge